

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 19-451V  
UNPUBLISHED

CHERI SLEETH,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: January 28, 2022

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

*Ronald Craig Homer, Conway, Homer, P.C., Boston, MA, for Petitioner.*

*Matthew Murphy, U.S. Department of Justice, Washington, DC, for Respondent.*

### **DECISION AWARDING DAMAGES**<sup>1</sup>

On March 27, 2019, Cheri Sleeth filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) caused by an influenza (“flu”) vaccine administered on October 6, 2016. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On November 10, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a SIRVA<sup>3</sup>. On January 27, 2022, Respondent filed a proffer

<sup>1</sup> Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

<sup>3</sup> Respondent has no objection to the amount of the award set forth in the proffer and waived his right to seek review of a damages decision. However, Respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Chief Special Master's December 13, 2021, entitlement decision.

on award of compensation ("Proffer") indicating Petitioner should be awarded \$129,525.46 (comprised of \$127,500.00 in pain and suffering and \$2,025.46 for unreimbursed expenses). Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$129,525.46 (comprised of \$127,500.00 in pain and suffering and \$2,025.46 for unreimbursed expenses) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.<sup>4</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**  
Brian H. Corcoran  
Chief Special Master

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<sup>4</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

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|---|---|--|
| <p>CHERI SLEETH,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>SECRETARY OF HEALTH AND HUMAN<br/>SERVICES,</p> <p style="text-align: center;">Respondent.</p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p>No. 19-451V</p> <p>Chief Special Master Corcoran</p> <p>ECF</p> |
|---|---|--|

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

On March 27, 2019, Cheri Sleeth (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of a seasonal influenza (“flu”) vaccine she received on October 6, 2016. Petition at 1. On April 8, 2021, the Secretary of Health and Human Services (“respondent”) filed a Vaccine Rule 4(c) Report recommending that entitlement to compensation be denied. Rule 4(c) Report at 1 (ECF #41). On November 10, 2021, Chief Special Master Corcoran issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for her SIRVA.<sup>1</sup> See Ruling on Entitlement (ECF #51).

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<sup>1</sup> Respondent has no objection to the amount of the proffered award of damages set forth herein. Assuming the Chief Special Master issues a damages decision in conformity with this proffer, respondent waives his right to seek review of such damages decision. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Chief Special Master’s December 13, 2021, entitlement decision.

**I. Items of Compensation**

**A. Pain and Suffering**

Respondent proffers that petitioner should be awarded \$127,500.00 in pain and suffering.

See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

**B. Past Unreimbursable Expenses**

Evidence supplied by petitioner documents that she incurred past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$2,025.46. See 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

**II. Form of the Award**

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following<sup>2</sup>: a lump sum payment of \$129,525.46, in the form of a check payable to petitioner.

**III. Summary of Recommended Payments Following Judgment**

|   |                     |
|---|---------------------|
| Lump sum payable to petitioner, Cheri Sleeth: | <b>\$129,525.46</b> |
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<sup>2</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

Respectfully submitted,

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/s/ Matthew L. Murphy  
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DATED: January 27, 2022